

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA, ex rel.,)	
and FLFMC, LLC.,)	
)	Civil Action No.
Plaintiffs,)	
)	JURY TRIAL DEMANDED
v.)	
)	<u>Filed Electronically</u>
PATCH PRODUCTS, INC.,)	
)	
Defendant.)	

COMPLAINT

Plaintiffs for their Complaint herein, allege that:

Nature of the Action

1. This case is a civil action for, *inter alia*, false marking in violation of 35 U.S.C. § 292(a).

The Parties

2. Relator FLFMC brings this action in the name of the United States and its own name (collectively "Plaintiffs"), pursuant to 35 U.S.C. § 292(b). Plaintiff FLFMC is a Pennsylvania LLC with its principal place of business in Pennsylvania.

3. Defendant Patch Products, Inc. is a Wisconsin corporation with its principal place of business at 1400 E. Inman Pkwy. Beloit, WI 53511.

Jurisdiction and Venue

4. This case is a civil action for, *inter alia*, false marking in violation of 35 U.S.C. § 292(a). This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1335(a), and 1338(a) and (b), as this action involves substantial claims arising under the patent laws of the United States.

5. Venue for this action is proper in the Western District of Pennsylvania pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1395(a) because the asserted claims arose in this District and, on information and belief, Defendant, at all times material hereto, has done business in this District.

6. This court has personal jurisdiction over this Defendant, because, upon information and belief, Defendant has sold its falsely marked products in Pennsylvania and in this District and/or in the stream of commerce with knowledge that they would be sold in Pennsylvania and in this District. Upon information and belief, such sales in Pennsylvania and in this District of Defendant's products are substantial, continuous and systematic.

Background

7. United States Patent No. 2,853,830 ("the '830 patent") was filed on March 28, 1956, issued on September 30, 1958 and assigned to Smethport Specialty Co.

8. Pursuant to the provisions of 35 U.S.C. § 154 then in effect, the '830 patent expired on September 30, 1975.

9. Upon information and belief, in 2008 Patch Products, Inc. acquired Smethport Specialty Co.

10. Patch Products, or its agents, manufacture, sell, offer to sell, and/or advertise the product referred to as Wooly Willy™.

11. Wooly Willy™ is marked with the '830 patent.

First Cause of Action
(False Marking)

12. Plaintiffs repeat and re-allege paragraphs 1-11 as if set forth fully herein.

13. After September 30, 1975, Defendant or its agents marked upon, affixed to, or used in advertising in connection with items, including at least Wooly Willy™, phrases referring to the '830 patent, implying that the item was patented.

14. Defendant or its agents had ample time to perform due diligence research on Wooly Willy™ and its patent status, and having failed to stop marking the product with the patent number, continue to do so for the purpose of deceiving the public.

Prayer for Relief

WHEREFORE, Plaintiffs pray that:

- A. This Court find that Defendant has violated 35 U.S.C. § 292(a);
- B. This Court assess a fine in accordance with 35 U.S.C. § 292;

C. This Court declare this case to be an exceptional case under 35 U.S.C. § 285 and award Plaintiffs their reasonable costs and attorneys' fees, together with interest, including pre-judgment interest, thereon; and

D. This Court grant Plaintiffs such further and other relief (including attorney's fees) to which they may be entitled.

JURY DEMAND

Plaintiffs demand trial by jury on all issues to which it is entitled.

Respectfully submitted,

s/Tony J. Thompson
David G. Oberdick, Esquire
Pa. I.D. No. 47648
Email: dgo@muslaw.com

Tony J. Thompson, Esquire
Pa. I.D. No. 204609
Email: tjt@muslaw.com

Meyer, Unkovic & Scott LLP
535 Smithfield Street, Suite 1300
Pittsburgh, PA 15222

(412) 456-2800

Attorneys for Plaintiffs

Dated: June 8, 2010